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Summary of Stakeholders' submissions on Tuvalu*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a summary of four stakeholders' submissions[1] to the universal periodic review, presented in a summarized manner owing to word-limit constraints.

II. Information provided by stakeholders

A. Scope of international obligations and cooperation with international human rights mechanisms and bodies[2]

2. The Center for Global Nonkilling (CGNK) recommended that Tuvalu ratify as soon as possible the Convention on the Prevention and Punishment of the Crime of Genocide; the International Covenant on Civil and Political Rights and its second protocol, aiming at the abolition of the death penalty; and the International Convention for the Protection of All Persons from Enforced Disappearance.[3]

3. The International Center for Advocates against Discrimination (ICAAD) recommended that Tuvalu ratify the Convention on the Rights of Persons with Disabilities. It stressed that protecting the rights of people with disabilities should be a priority, and ratification of this legal instrument would help ensure action and accountability in the right direction.[4]

4. CGNK also recommended that Tuvalu, together with all States in the Pacific region, set up as soon as possible a regional human rights legal mechanism.[5]

5. While giving due consideration to the State's limited resources, CGNK encouraged Tuvalu to participate more in international affairs, including via Internet, to make

* The present document was not edited before being sent to United Nations translation services.

recommendations to other States in the framework of the universal periodic review, and to update on the ratification processes of peace-related treaties.[6]

B. National human rights framework[7]

6. ICAAD stated that the Tuvalu Human Rights Action Plan 2016-2020 was a very comprehensive and ambitious plan that covered many important issues related to violence against women and girls. The Plan reportedly included a positive move towards evaluating new legislation and reviewing the Penal Code, and expanded access to judicial services. Additionally, the National Strategy for Sustainable Development 2016-2020 (Te Kakeega III Plan) strived to expand seats for women in Parliament, as well as to include gender as a prohibited ground of discrimination in the Bill of Rights. ICAAD stressed the importance of evaluating progress towards the outlined goals. In the current Te Kakeega III Plan, gender should be considered in all categories as it intersected with all other issues, particularly economic development and environmental policy.[8]

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross-cutting issues

Equality and non-discrimination[9]

7. ICAAD recommended that gender and disability be added as prohibited grounds of discrimination in the Bill of Rights.[10]

2. Civil and political rights

Right to life, liberty and security of person[11]

8. CGNK stated that the Constitution of Tuvalu guaranteed the right to life. However, it expressed concern that the exceptions to this right provided for in article 16(2) and article 30 of the Constitution were too broad. It stressed that the use of force by officials, including lethal, should be subject to an automatic and independent legal control. It strongly recommended that Tuvalu amend as soon as possible the Constitution to guarantee fully the right to life, and to remove all exceptions to this right. It encouraged Tuvalu to establish an automatic judiciary procedure to verify the legality, circumstances and sufficient preventions means provided for beforehand, in any situation where force was or might have been used by officials in the course of their duty.[12]

9. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) reported that in Tuvalu, corporal punishment of children was lawful, despite recommendations to prohibit it made by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, and during the second cycle of Tuvalu's universal periodic review.[13] Corporal punishment was reportedly lawful at home, in early childhood care and in day care for older children (article 226 of the Penal Code 1965), and in schools (article 29 of the Education Act 1976). It was partially lawful in alternative care settings and in penal institutions (article 226 of the Penal Code 1965), and as a sentence for a crime (article 8(8) of the Island Courts Act 1965). GIEACPC stressed that achieving prohibition required legislation to be enacted with a view to prohibiting explicitly corporal punishment of children in all settings.[14]

10. GIEACPC expressed the hope that Member States would raise the issue of corporal punishment of children during Tuvalu's third review and would make a specific recommendation that Tuvalu draft and enact legislation, as a matter of priority, to clearly prohibit all corporal punishment of children in every setting of their lives, and repeal any legal defences to its use.[15]

Administration of justice, including impunity, and the rule of law[16]

11. ICAAD stated that in 2014, the Tuvaluan Government had unanimously passed the Family Violence and Protection Act, with the help of the Secretariat for the Pacific Community Regional Rights Resource Team. This legislation, when fully implemented, would be able to address many of the gaps with regard to domestic violence. However, ICAAD noted that there was a lot of work to be done to ensure that women had access to judicial services and that gender bias did not preclude fair sentencing.[17]

12. ICAAD stated that, with the help of several partner organizations, it had developed the TrackGBV program in the Pacific with a view to increasing transparency, consistency, and accountability in judicial systems. Tracking cases provided actionable data on gender-based violence, including judges' attitudes and sentencing practices. In a published study that looked at over 900 cases in seven Pacific Island countries, the preliminary randomized analysis found in Tuvalu only four cases - all sexual assault cases - that fit the criteria for comparison. The lack of data transferred from national courts to the largest and most comprehensive regional legal database limited transparency and accountability.[18]

13. ICAAD noted that in the few cases of gender-based violence that were adjudicated, reconciliation was often used as a mitigating factor. Reconciliation referred to both formal and informal cultural practices of apology and forgiveness. It played an important role in the close-knit communities of Tuvalu in promoting healthy communal relationships; however, these practices in the context of gender-based violence subsumed the survivor's rights and access to justice for the benefit of the wider community.[19] ICAAD mentioned a case of sexual assault against a minor in 2015 where a judge clearly stated that reconciliation functioned as a mitigating factor, which resulted in a full suspension of the perpetrator's sentence. ICAAD stressed that while reconciliation could be used to rebuild communal relationships, it was also used as means to prevent prosecution in the first place. ICAAD recommended that in all cases of domestic violence, reconciliation should not be used as a mitigating factor to reduce the sentence, nor used to reduce the charges, against the perpetrator.[20]

14. In addition, ICAAD referred to a court case that highlighted a gap in legislation wherein the judge suggested that the perpetrator pleaded not guilty to the charges of indecent assault because his crime of forced oral sex committed against a 4-year-old girl did not fall into a section of the Penal Code. An outdated provision was cited which supported the recommendation for the perpetrator to plead not guilty. ICAAD highlighted that the Penal Code did not address other forms of sexual assault, including forced oral sex, anal penetration, and the use of objects.[21]

Fundamental freedoms and the right to participate in public and political life[22]

15. Echoing the preamble of the Constitution, which provided that the guiding principles in government and in social affairs were agreement, courtesy and the search for consensus, CGNK encouraged Tuvalu to explore new ways to practice democracy and to reinforce participation of truthfully informed citizens, including for constitutional reforms and by giving official recognition to local consensus practices.[23]

3. Economic, social and cultural rights

Right to health

16. ADF International (ADFI) stated that Tuvalu should focus on helping women get through pregnancy and childbirth safely, and resources should focus on improving conditions where necessary and providing greater access to health-care for pregnant women, women undergoing childbirth and postpartum women. ADFI noted that precise data on the health-care system, rates of maternal mortality and morbidity, and unmet need for medical personnel in Tuvalu, was unavailable. It stressed that there was only one hospital in the entire country, the Princess Margaret Hospital, in the capital Funafuti. Tuvalu was made up of nine islands and they were all located relatively remotely from each other, making the hospital difficult to access for those not resident in the capital. Satellite clinics on the outer islands were generally staffed only with a nurse and a midwife.[24]

17. ADFI recommended that Tuvalu improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health; and focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women in poverty and those women living on the outer islands.[25]

4. Rights of specific persons or groups

Women[26]

18. ICAAD reported that gender stereotypes continued to reinforce discrimination against women in Tuvalu.[27]

19. ICAAD stated that equal access to land ownership remained an issue in Tuvalu. There was continued resistance to assessing land legislation. Although under current legislation, women and men had equal rights to *kaitasi* land, the titleholder was nearly always a man. In practice, the titleholder could transfer or mortgage the land without anyone else's consent. ICAAD added that land inheritance was patrilineal and hindered women's opportunities to be titleholders in the first place. ICAAD recommended that a holistic review of land legislation be undertaken, specifically the Native Lands Act and Tuvalu Lands Code, to ensure that no discrimination occurred in practice, and to revise legislation accordingly.[28]

20. ICAAD reported that Tuvalu had high rates of gender-based violence, and that cases of sexual assault were allegedly widely under-reported. It stated that societal attitudes still justified domestic violence in Tuvalu, which would continue to be a barrier to reporting cases and taking prosecution seriously.[29] Furthermore, according to ICAAD, sexual harassment was an area that had received little attention in Tuvalu.[30]

21. ICAAD stressed that: 1) marital rape should be criminalized; 2) existing legislation regarding rape and indecent assault should be replaced with sexual assault graded based on harm; and 3) instead of the complainant being required to prove the lack of consent, legislation should require proof of coercive measures not limited to force and violence.

22. ICAAD stressed the need for more information and tracking of complaints regarding violence against women. The most recent comprehensive prevalence survey on gender-based violence took place in 2007, and there was a dire need for another national prevalence survey to evaluate progress and help guide data-driven plans for eliminating gender-based violence. According to ICAAD, the Police Department should continue to collect data on complaints, prosecutions, and convictions on domestic and sexual violence cases disaggregated by sex, age, nationality, disability, and relationship between the victim and the perpetrator. Furthermore, coordination with health care facilities and women's rights organizations, who worked directly with survivors, was imperative to not only gather more comprehensive data, but also understand the pathway and potential barriers to accessing the courts.[31]

Persons with disabilities[32]

23. ICAAD reported that the authorities were in the process of drafting a National Disability Policy as a part of Te Kakeega III.

24. ICAAD noted that the intersection between gender and disability exacerbated the problem of gender-based violence around the world. International studies suggested that women with disabilities were twice as likely to be raped or abused as the general population of women. It added that although there was no data specific to Tuvalu, it was clear that disabilities could create structural barriers making these women and girls more vulnerable to gender-based violence. Societal norms and policies perpetuated attitudes about women with disabilities that made finding safety, legal resources, and justice difficult.[33]

25. ICAAD also noted that disabled women and girls faced even greater challenges in terms of credibility in the justice system. Since cases at the Magistrate and Island Courts level were allegedly not reported on as thoroughly as those at the High Court and Court of Appeal level, it was reportedly difficult to track these dynamics in Tuvalu.[34]

26. ICAAD stated that the Fusi Alofa Association and the Tuvaluan Red Cross led substantive work on behalf of persons with disabilities. Fusi Alofa led the only school for students with disabilities, but reportedly did not receive any Government funding.[35]

27. ICAAD reported that Fusi Alofi had noted cases in Tuvalu of physical and sexual abuse of children with disabilities that went unreported.[36]

28. ICAAD recommended that the National Disability Policy emphasize the intersection of gender and the increased risk of violence against women and girls with disabilities.[37]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org

Civil society

Individual submissions:

ADFI	ADF International, Geneva (Switzerland);
CGNK	Center for Global Nonkilling, Geneva (Switzerland);
GIEACPC	Global Initiative to End All Corporal Punishment of Children (London, United Kingdom of Great Britain and Northern Ireland);
ICAAD	International Center for Advocates Against Discrimination (New York, United States of America).

[2] For relevant recommendations see see A/HRC/24/8, paras. 82.1-12, 82.25-28, 84.1-11 and 84.17.

[3] CGNK, p. 3.

[4] ICAAD, p. 6.

[5] CGNK, p. 3.

[6] CGNK, p. 4.

[7] For relevant recommendations see see A/HRC/24/8, paras. 82.12-18, 82.22-24, 84.12-16, and 84.21-22.

[8] ICAAD, p. 3-4.

[9] For relevant recommendations, see A/HRC/24/8, paras. 84.18-20.

[10] ICAAD, p. 4 and 6.

[11] For relevant recommendations, see A/HRC/24/8, paras. 82.53-54 and 84.23-24.

[12] CGNK, p. 4.

[13] GIEACPC, p. 1.

[14] GIEACPC, p. 2-3.

[15] GIEACPC, p. 1.

[16] For relevant recommendation, see A/HRC/24/8, para. 82.55.

[17] ICAAD, p. 3.

[18] ICAAD, p. 3.

[19] ICAAD, p. 3.

[20] ICAAD, p. 2.

[21] ICAAD, p. 2.

[22] For relevant recommendations, see A/HRC/24/8, paras. 82.57-58 and 84.25-27.

[23] CGNK, p. 4.

[24] ADFI, para. 14-15 and 20.

[25] ADFI, para. 21(d) and 21(e).

[26] For relevant recommendations, see A/HRC/24/8, paras. 82.20, 82.29-52, and 82.56.

[27] ICAAD, p. 3.

[28] ICAAD, p. 4-5.

[29] ICAAD, p. 3.

[30] ICAAD, p. 4.

[31] ICAAD, p. 5.

[32] For relevant recommendation, see A/HRC/24/8, para. 82.66.

[33] ICAAD, p. 5.

[34] ICAAD, p. 6.

[35] ICAAD, p. 6.

[36] ICAAD, p. 6.

[37] ICAAD, p. 7.